

ONE HUNDRED THIRTEENTH CONGRESS
Congress of the United States
House of Representatives

487

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

May 13, 2014

Thomas E. Wheeler
Chairman
Federal Communications Commission
445 12th St, S.W.
Washington, D.C. 20554

Dear Chairman Wheeler:

We write today to express our grave concern that the Commission continues to consider reclassifying Internet broadband service as an old-fashioned "Title II" common carrier service. Such unwarranted and overreaching government intrusion into the broadband marketplace will harm consumers, halt job creation, curtail investment, stifle innovation, and set America down a dangerous path of micromanaging the Internet. The Commission must reject this approach.

Over a decade ago, the FCC wisely rejected calls to regulate broadband service as a Title II service, noting Congress's explicit direction to leave the Internet "unfettered by federal or state regulation." The result of this regulatory restraint has been billions of dollars in private sector investment, tremendous annual increases in broadband speeds, and an explosion of applications, content and services available to consumers over the Internet.


Now, despite the incredible record of broadband success in America, the Commission may be contemplating turning back the clock on this process and proceeding with a classification that gives itself the authority to regulate every possible aspect of the Internet. Simply raising the prospect of such stifling regulation harms broadband providers, the American economy, and ultimately broadband consumers – actually doing so would be fatal to the Internet as we know it.

Indeed, consumers will fare the worst if the FCC proceeds with this "common carrier-ization" of broadband. The FCC efforts to impose Title II regulation will prohibit pricing innovation and force consumers to pay for the entire cost of building and operating American Internet access networks. As demand for video and data continues to explode exponentially, this will ultimately result in broadband becoming unaffordable for many Americans. Title II reclassification could deprive consumers of the benefits of creative and flexible market-based pricing plans that would fit their video and data needs at affordable prices.


Investors, investment analysts, and broadband companies have advised that regulating broadband as a Title II service will create such regulatory uncertainty that stock values will drop and investment capital will become much harder to find. Decreased investment leads to deferred maintenance, infrequent upgrades, and stalled deployment, which, at best, leads to higher consumer prices and at worst leaves consumers with fewer, if any, reliable choices. This market reaction is not speculation, it is reality. When the FCC briefly considered its "third way" implementation of Title II several years ago, broadband provider stocks dropped sharply. Without capital, providers cannot innovate, upgrade their networks, or create new jobs. This is not an outcome anyone wants.


Sixteen years ago, in a report to Congress, then-Chairman Bill Kennard and the FCC set a course for this country that supports consumer choice and champions the freedom of the Internet. The regulatory approach to date has done just that – by rejecting legacy regulation and supporting the job-creating and investment potential of the private sector. The Commission needs to send a strong signal that it has no intention of harming today's thriving market and consumers by imposing expansive new Title II regulation on broadband service and micromanaging the Internet under rules designed for the legacy telephone network. We ask you to end this uncertainty by stating clearly your intention to drop any consideration of the Title II approach, and closing your Title II docket.

Sincerely,


Fred Upton
Chairman


Greg Walder
Chairman
Subcommittee on Communications and Technology


Marsha Blackburn
Vice Chairman


Bob Latta
Vice Chairman
Subcommittee on Communications and Technology

cc: The Honorable Henry A. Waxman, Ranking Member
House Committee on Energy and Commerce

The Honorable Anna Eshoo, Ranking Member
Subcommittee on Communications and Technology

The Honorable Mignon Clyburn, Commissioner
Federal Communications Commission

The Honorable Jessica Rosenworcel, Commissioner

Federal Communications Commission

The Honorable Ajit Pai, Commissioner
Federal Communications Commission

The Honorable Michael O'Rielly, Commissioner
Federal Communications Commission



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

June 30, 2014

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Upton:

Thank you for contacting me with your views regarding the Commission's efforts to reinstate rules to preserve and protect the Open Internet. As you know, the *Notice of Proposed Rulemaking* ("Notice") adopted by the Commission in May 2014 proposes rules that would replace those struck down early this year by the U.S. Court of Appeals for the D.C. Circuit in its *Verizon* decision, and we ask a number of questions about the appropriate legal foundation for such rules. Your letter touches on some of the most important issues presented in the *Notice*, and it will be included in the record of the proceeding and considered as part of the Commission's review.

The Commission has been working for more than a decade to safeguard the Open Internet. While there has been a bipartisan consensus, starting under the Bush Administration with Chairman Powell, on the importance of an open Internet to economic growth, investment, and innovation, we find ourselves today without any rules in place to protect and promote Internet openness. The *status quo* is unacceptable. Unless and until the FCC adopts new rules, broadband providers will be free to block, degrade, or otherwise disadvantage innovative services on the Internet without threat of sanction by the FCC. As Chairman, I will utilize the best tools available to me to ensure the Commission adopts effective and resilient open Internet rules.

The court's decision in *Verizon* established unequivocally that the Commission has the legal authority under Section 706 of the Telecommunications Act of 1996 to craft enforceable rules to protect and promote an open Internet for all Americans. Specifically, the court agreed with the Commission's conclusion that an open Internet enables a virtuous cycle of investment and broadband deployment – *i.e.*, that innovative content and services at the edge of the network drive consumer demand for broadband services, which drives investment in broadband infrastructure and deployment, which drives more innovation at the network's edges, and so on. The court affirmed that it is the Commission's responsibility to protect this virtuous cycle and that Section 706 authorizes us to do so.

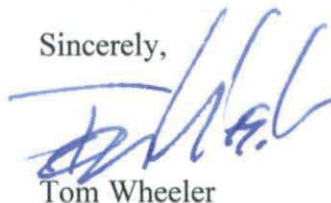
I believe that the Section 706 framework set forth by the court provides us with the tools we need to adopt and implement robust and enforceable Open Internet rules. For this reason, the

Notice used the court's legal blueprint as a starting point. Nevertheless, the Commission also is seriously considering the use of Title II of the Communications Act as a basis for legal authority. The *Notice* explains that both Section 706 and Title II are viable solutions to the authority issue, and seeks comment on the benefits of each approach, as well as the benefits of one approach over the other, to ensuring that the Internet remains an open platform for innovation and expression. Additionally, the *Notice* seeks comment on other proposals suggesting the Commission could apply both Section 706 and Title II to component parts of broadband Internet access services. And to your concerns about the "common carrier-ization" of broadband, the *Notice* asks about the extent to which forbearance from certain provisions of the Act or our rules would be justified so that the regulatory treatment of broadband providers is appropriately balanced.

This *Notice* is the first step in the process, and I look forward to comments from all interested stakeholders, including members of the general public, as we develop a fulsome record on the legal authority and many other questions raised in the *Notice*. To that end, in an effort to maximize public participation in this proceeding, we have established an Open Internet email address – openinternet@fcc.gov – to ensure that Americans who may not otherwise have the opportunity to participate in an FCC proceeding can make their voices heard. In addition, to ensure sufficient opportunity for broad public comment, we have provided a lengthy comment and reply period that will give everyone an opportunity to participate.

Again, I appreciate your deep interest in this matter and look forward to a continued engagement with you as we move forward with this proceeding.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tom Wheeler", is written over the printed name.

Tom Wheeler



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

June 30, 2014

The Honorable Greg Walden
Chairman
Subcommittee on Communications and Technology
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Walden:

Thank you for contacting me with your views regarding the Commission's efforts to reinstate rules to preserve and protect the Open Internet. As you know, the *Notice of Proposed Rulemaking* ("Notice") adopted by the Commission in May 2014 proposes rules that would replace those struck down early this year by the U.S. Court of Appeals for the D.C. Circuit in its *Verizon* decision, and we ask a number of questions about the appropriate legal foundation for such rules. Your letter touches on some of the most important issues presented in the *Notice*, and it will be included in the record of the proceeding and considered as part of the Commission's review.

The Commission has been working for more than a decade to safeguard the Open Internet. While there has been a bipartisan consensus, starting under the Bush Administration with Chairman Powell, on the importance of an open Internet to economic growth, investment, and innovation, we find ourselves today without any rules in place to protect and promote Internet openness. The *status quo* is unacceptable. Unless and until the FCC adopts new rules, broadband providers will be free to block, degrade, or otherwise disadvantage innovative services on the Internet without threat of sanction by the FCC. As Chairman, I will utilize the best tools available to me to ensure the Commission adopts effective and resilient open Internet rules.

The court's decision in *Verizon* established unequivocally that the Commission has the legal authority under Section 706 of the Telecommunications Act of 1996 to craft enforceable rules to protect and promote an open Internet for all Americans. Specifically, the court agreed with the Commission's conclusion that an open Internet enables a virtuous cycle of investment and broadband deployment – *i.e.*, that innovative content and services at the edge of the network drive consumer demand for broadband services, which drives investment in broadband infrastructure and deployment, which drives more innovation at the network's edges, and so on. The court affirmed that it is the Commission's responsibility to protect this virtuous cycle and that Section 706 authorizes us to do so.

I believe that the Section 706 framework set forth by the court provides us with the tools we need to adopt and implement robust and enforceable Open Internet rules. For this reason, the *Notice* used the court's legal blueprint as a starting point. Nevertheless, the Commission also is seriously considering the use of Title II of the Communications Act as a basis for legal authority. The *Notice* explains that both Section 706 and Title II are viable solutions to the authority issue, and seeks comment on the benefits of each approach, as well as the benefits of one approach over the other, to ensuring that the Internet remains an open platform for innovation and expression. Additionally, the *Notice* seeks comment on other proposals suggesting the Commission could apply both Section 706 and Title II to component parts of broadband Internet access services. And to your concerns about the "common carrier-ization" of broadband, the *Notice* asks about the extent to which forbearance from certain provisions of the Act or our rules would be justified so that the regulatory treatment of broadband providers is appropriately balanced.

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Again, I appreciate your deep interest in this matter and look forward to a continued engagement with you as we move forward with this proceeding.

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Tom Wheeler



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

June 30, 2014

The Honorable Marsha Blackburn
U.S. House of Representatives
217 Cannon House Office Building
Washington, D.C. 20515

Dear Congresswoman Blackburn:

Thank you for contacting me with your views regarding the Commission's efforts to reinstate rules to preserve and protect the Open Internet. As you know, the *Notice of Proposed Rulemaking* ("Notice") adopted by the Commission in May 2014 proposes rules that would replace those struck down early this year by the U.S. Court of Appeals for the D.C. Circuit in its *Verizon* decision, and we ask a number of questions about the appropriate legal foundation for such rules. Your letter touches on some of the most important issues presented in the *Notice*, and it will be included in the record of the proceeding and considered as part of the Commission's review.

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Tom Wheeler



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

June 30, 2014

The Honorable Bob Latta
U.S. House of Representatives
2448 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Latta:

Thank you for contacting me with your views regarding the Commission's efforts to reinstate rules to preserve and protect the Open Internet. As you know, the *Notice of Proposed Rulemaking* ("Notice") adopted by the Commission in May 2014 proposes rules that would replace those struck down early this year by the U.S. Court of Appeals for the D.C. Circuit in its *Verizon* decision, and we ask a number of questions about the appropriate legal foundation for such rules. Your letter touches on some of the most important issues presented in the *Notice*, and it will be included in the record of the proceeding and considered as part of the Commission's review.

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